

Senate Bill No. 461

CHAPTER 556

An act to amend Sections 3059 and 3090 of, and to add Sections 3051, 3060, 3090.1, 3096.6, 3096.7, and 3107.1 to, the Business and Professions Code, relating to optometry, and making an appropriation therefor.

[Approved by Governor September 28, 1997. Filed
with Secretary of State September 29, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 461, Karnette. Optometry: unprofessional conduct.

Existing law provides for the licensure and regulation of optometrists, and provides that certain acts by an optometrist constitute unprofessional conduct. Existing law also provides that all money collected pursuant to these provisions be paid into the Optometry Fund in the State Treasury.

Existing law requires applicants for examination for a certificate of registration as an optometrist to meet certain requirements.

This bill would require all applicants who matriculate in a school of optometry on or after September 1, 1997, to show evidence that they have received education in child abuse detection and the detection of alcoholism and other chemical substance dependency. This bill would also require the board to encourage every optometrist to take courses in pharmacology and pharmaceuticals as a part of continuing education, to consider requiring certain optometrists to take courses in child abuse detection and elder abuse detection, and to develop and disseminate materials regarding child abuse and neglect and elder abuse and neglect.

This bill would authorize a licensee to be ordered to undergo a professional competency examination if the board determines there is reasonable cause to believe the licensee is unable to practice optometry with reasonable skill and safety to patients. It would define the criteria for demonstrating reasonable cause, and would provide that the results of the competency examination are admissible as direct evidence in a disciplinary or interim proceeding against the licensee.

This bill would provide that the following acts, as prescribed, constitute unprofessional conduct: (1) conviction of violating any state or federal statute or regulation regulating dangerous drugs or controlled substances, (2) knowingly making or signing a document relating to optometry that falsely represents facts or (3) altering, modifying, or creating a medical record of any person with fraudulent intent.

The bill would also authorize the State Board of Optometry to impose a civil penalty of \$500 for the altering or modifying of a medical record, or creating a false record, with fraudulent intent. By increasing the source of money for a continuously appropriated fund, this bill would make an appropriation.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 3051 is added to the Business and Professions Code, to read:

3051. All applicants for examination for a certificate of registration in accordance with the educational and examination requirements adopted pursuant to Section 3023.1 shall show the board by satisfactory evidence that he or she has received education in child abuse detection and the detection of alcoholism and other chemical substance dependency. This section shall apply only to applicants who matriculate in a school of optometry on or after September 1, 1997.

SEC. 2. Section 3059 of the Business and Professions Code is amended to read:

3059. (a) It is the intent of the Legislature that the public health and safety would be served by requiring all holders of licenses to practice optometry granted under this chapter to continue their education after receiving their licenses. The board shall adopt regulations that require, as a condition to the renewal thereof, that all holders of licenses submit proof satisfactory to the board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the board or by other means deemed equivalent by the board.

(b) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for reasons of health, military service, or other good cause.

(c) If for good cause compliance cannot be met for the current year, the board may grant exemption of compliance for that year, provided that a plan of future compliance that includes current requirements as well as makeup of previous requirements is approved by the board.

(d) The board may require that proof of compliance with this section be submitted on an annual or biennial basis as determined by the board.

(e) The board may adopt regulations to require licensees to maintain current certification in cardiopulmonary resuscitation. Training required for the granting or renewal of a cardiopulmonary certificate shall not be credited towards the requirements of subdivision (a) or (f).



(f) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 shall complete a total of 50 hours of continuing education every two years in order to renew his or her certificate. Thirty-five of the required 50 hours of continuing education shall be on the diagnosis, treatment, and management of ocular, systemic disease. This subdivision shall become operative only if legislation that requires the renewal of optometrists' licenses every two years is enacted during the 1995–96 Regular Session of the Legislature.

(g) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 shall complete a total of 25 hours of continuing education every year in order to renew his or her certificate. Eighteen of the required 25 hours of continuing education shall be on the diagnosis, treatment, and management of ocular, systemic disease. This subdivision shall become operative only if legislation that requires the renewal of optometrists' licenses every two years is not enacted during the 1995–96 Regular Session of the Legislature.

(h) The board shall encourage every optometrist to take a course or courses in pharmacology and pharmaceuticals as part of his or her continuing education.

(i) The board shall consider requiring courses in child abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected children.

(j) The board shall consider requiring courses in elder abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abuse or neglected elder persons.

SEC. 3. Section 3060 is added to the Business and Professions Code, to read:

3060. The board shall periodically develop and disseminate to all persons licensed to practice optometry information and educational material regarding all of the following:

(a) The detection of child abuse and neglect. The board shall consult with the Office of Child Abuse Prevention in developing the materials distributed pursuant to this subdivision.

(b) The detection of elder abuse and neglect. The board shall consult with the Adult Protective Services Division of the State Department of Social Services in developing the materials distributed pursuant to this subdivision.

SEC. 4. Section 3090 of the Business and Professions Code is amended to read:

3090. The certificate of registration of any person registered under this chapter, or any former act relating to the practice of optometry, may be revoked or suspended for a fixed period by the board for any of the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any

provision of this chapter or of the rules and regulations adopted by the board pursuant to this chapter and in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) Unprofessional conduct.

(c) Gross ignorance.

(d) Inefficiency in his or her profession.

SEC. 5. Section 3090.1 is added to the Business and Professions Code, to read:

3090.1. (a) A licensee may be ordered to undergo a professional competency examination if, after investigation and review by the Board of Optometry, there is reasonable cause to believe that the licensee is unable to practice optometry with reasonable skill and safety to patients. Reasonable cause shall be demonstrated by one or more of the following: (1) a single incident of gross negligence; (2) a pattern of inappropriate prescribing; (3) an act of incompetence or negligence causing death or serious bodily injury; or (4) a pattern of substandard care.

(b) The results of a competency examination shall be admissible as direct evidence and may be considered relevant in any subsequent disciplinary or interim proceeding against the licensee taking the examination, and, assuming those results are determined to be relevant, shall be considered together with other relevant evidence in making a final determination.

SEC. 6. Section 3096.6 is added to the Business and Professions Code, to read:

3096.6. Knowingly making or signing any certificate or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct. Section 3120 shall not apply to this section.

SEC. 7. Section 3096.7 is added to the Business and Professions Code, to read:

3096.7. Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct. In addition to any other disciplinary action, the State Board of Optometry may impose a civil penalty of five hundred dollars (\$500) for a violation of this section. Section 3120 shall not apply to this section.

SEC. 8. Section 3107.1 is added to the Business and Professions Code, to read:

3107.1. The conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional

conduct. The record of the conviction is conclusive evidence of this unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

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